IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.10217/05
Smt. Chukna Devi Vs. State of Raj. & Anr.

S.B. Civil Writ Petition No.7756/05
Sheoji Ram Choudhary Vs. State of Raj. & Ors.

08.05.2007

***Hon'ble Mr. Justice Mohammad Rafiq***

Shri S.N. Kumawat for petitioner.
Shri Jagmeet Singh for Shri G.S. Gill,
Addl. Advocate General for State.
Shri Rajneesh Gupta )
Shri Sunit Awasthi ) for respondents.

Heard learned counsel for the parties.

These two petitions have been filed by husband and wife who both successfully got elected as Sarpanch of Gram Panchayat, Gegal, Panchayat Samiti, Shrinagar, Distt. Ajmer against the proceedings sought to be initiated against them for their removal on the ground that at the time of filing of

nomination papers, they were disqualified to contest the elections in view of Section 19(l) of the Rajasthan Panchayati Raj Act, 1994 having had the third child born on 8.7.1996 i.e. after 27.11.1995 which is the cut off date.

Controversy raised in these case is squarely covered by the decision of Larger Bench in the case of Smt. Sameera Bano Vs. State of Raj. & Ors, D.B. Special Appeal (W) No.236/06, decided on 2.4.2007 wherein it was held as under:-

> "that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and cannot be adjudicated by the authority under rule 23 of the Rules."

Following the view taken by the larger bench in Smt. Sameera Bano, supra, in so far as the S.B. Civil Writ Petition

No.7756/05 filed by Sheoji Ram is concerned, the impugned order Annexure-13 dated 18.5.2005 is set aside and so far as the S.B. Civil Writ Petition No.10217/05 filed by Smt. Chukna Devi is concerned, the show cause notice dated Annexure-7 dated 8.7.05 is set aside. It is however clarified that the decision of this petition would not affect the pending election petition in regard to election of Smt. Chukna Devi in as much as this would also not preclude the Returning Officer in deciding validity of the nomination paper of either of the petitioners on that ground in the event of they decide to again contest the elections.

With these observations, the writ petitions are allowed.

**(Mohammad Rafiq),J.**

**Rs/-**